(2)

CF0000058737

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL NO. 1235 OF 1992.

APPELLANT :- (In jail) Samnoo Ram son of Jujhari Ram, aged about 21 years, occupation Labour, resident of village Dhangurra, P.S. Bhanu Pratapur, District Bastar.

Versus

RESPONDENT :- The State of M.P.

Conviction	Sentence
U/s. 302 I.P.C.	R.I. for life.

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE.

19-12-92 Hajeim Ledar Advocate

R.C.D.R. 19-12-92

(31) (3)

A.F.R.

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 1235 OF 1992

Sannoo Ram

Vs.

The State of Madhya Pradesh
(now State of Chhattisgarh)

Judgment for consideration

Sd/-
Dilip Raosaheb Deshmukh
Judge
19-9-2005

Hon'ble Shri Justice Fakhruddin

Sd/-
Fakhruddin
Judge

Post for 26-09-2005

Sd/-
Fakhruddin
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 1235 OF 1992

Sannoo Ram

Vs.

The State of Madhya Pradesh
(now State of Chhattisgarh)

Coram :- Hon'ble Shri Fakhruddin, J &
Hon'ble Shri Dilip Raosaheb Deshmukh, J

Smt. Kiran Jain, counsel for the appellant.

Shri Ashish Shukla, Government Advocate/Additional Public Prosecutor for the State.

JUDGMENT

(Delivered on 26th/Sept. 2005)

Per Dilip Raosaheb Deshmukh, J.

01. This appeal is directed against the judgment dated 4-11-1992 delivered in Sessions Trial No.99/91 by the Additional Sessions Judge, Kanker whereby the appellant was convicted under Section 302 of the Indian Penal Code for committing murder of his elder brother Jangulu Ram on 2-9-1990 at 9.00 p.m. in village Dhangudara, Police Station Bhanupratappur and was sentenced to imprisonment for life.

02. It is not disputed that Rajmotin, P.W.1 is the wife and Amrotin Bai, P.W.2 is the mother of the deceased. The appellant is the son of Amrotin Bai, P.W.2 and brother of the deceased.

03. The factual matrix is that in the night of 2-9-1990 a quarrel ensued between the appellant and the deceased Jangulu Ram at the house of the appellant, during which the

appellant assaulted Jangulu Ram by a "*Moosal*" on the head and chest. Rajmotin, P.W.1 and Amrotin Bai, P.W.2 saw the occurrence. Jangulu Ram sustained injuries on the right temporal region, left temporal region, top of skull and the lateral end of right eye brow and fell unconscious. Jangulu Ram was taken to Dondi by a Jeep for treatment in a hospital. He succumbed to the injuries. First Information Report (FIR), Ex.P/1 was lodged by Rajmotin, P.W.1 in Police Station Bhanupratappur on 4-9-1990 at 12.30 p.m. Assistant Sub Inspector, B.S. Solanki, P.W. 5 wrote the marg intimation vide Ex.P/7 and reached the place of occurrence on 4-9-1990. Inquest on the dead body of Jangulu Ram was prepared vide Ex.P/2. Dr. S. Yadu, P.W.10 conducted the autopsy on the dead body of Jangulu Ram on 5-9-1990 and found the following injuries :

i) Lacerated wound 2 x 1 cm. bone deep 2 cms. above and right of the lateral end of right eye brow.

ii) Eleptical Swelling 8 x 3 cms. over right temporal region.

iii) Swelling 6 x 2 cms. over left temporal region.

iv) Swelling over top of the scalp 6 x 3 cms. On dissection, blood clots present under each swelling and there was subdural haemorrhage over cerebrum. Blood clots were also present over left frontal cerebrum.

Dr. Yadu opined that the injuries were ante mortem and death was homicidal due to hemorrhage in brain.

04. One wooden "*Moosal*" was seized vide Ex.P/4 from the spot on 4-9-1990. Dr. Yadu after examining it opined vide

Ex.P/10-B that injuries sustained by the deceased could be caused by the "*Moosal*". After completion of investigation the appellant was prosecuted under Section 302 of the Indian Penal Code.

05. The appellant abjured the guilt, pleaded innocence and did not lead any evidence in defence. The prosecution examined as many as ten witnesses. The trial Judge relying upon the testimony of Rajmotin, P.W.1, Amrotin Bai, P.W.2, Ganesh Ram, P.W.3, Dhannudas, P.W.6, Mahendra Singh @ Mahendu, P.W.7, Prasad, P.W.8 and the medical evidence of Dr. S. Yadu, P.W.10 convicted the appellant under Section 302 of the Indian Penal Code and sentenced him as aforesaid.

06. Smt. Jain, learned counsel for the appellant has contended that there is no legal and reliable evidence on record to establish the charge under Section 302 of the Indian Penal Code against the appellant. In the alternative, she has argued that the offence if any was committed by the appellant during a sudden quarrel and in a heat of passion. The appellant did not intend to cause the death of his own brother Jangulu Ram, therefore, at the most the offence would not travel beyond Section 304 Part-II of the Indian Penal Code against the appellant. She placed reliance upon the decision of Apex Court rendered in the case of ***Ravi Kumar vs. State of Punjab*** reported in ***2005 Cri.L.J. 1742 (SC)***. Learned counsel for the appellant also argued that the medical evidence in this case did not show that the injuries sustained by deceased Jangulu Ram were sufficient in the ordinary course of nature to cause

death and therefore, the offence if any committed by the appellant would at the most fall under Section 304 Part-II of the Indian Penal Code. She further submitted that the appellant was in jail from 5-10-1990 to 5-2-2002 and had undergone incarceration for more than 11 years. On the other hand, learned counsel for the State argued in support of the impugned judgment.

07. We have heard the rival contentions and have also gone through the record of Sessions Trial No.99/91. Amrotin Bai, P.W.2 the mother of the appellant has stated that at night there was a quarrel upon some matter between the appellant and Jangulu Ram which was followed by a *marpeet*. When she tried to intervene the appellant pushed her away. She saw that Jangulu Ram had sustained injury on the head from which blood was oozing out and on being asked the appellant had told her that he had assaulted Jangulu Ram twice by the *Moosal*.

08. Rajmotin, P.W.1 the wife of the deceased has stated that upon hearing shouts of Amrotin Bai she went to her house and saw that the appellant was assaulting her husband Jangulu Ram by a *Moosal* where upon her husband fell on the ground. She saw that Jangulu Ram sustained injuries on the head and chest. While Jangulu Ram was being taken to Dondi hospital he died. Thereafter she lodged report vide Ex.P/1. In cross examination she has stated that when she reached the spot her husband Jangulu Ram was lying on the ground in a pool

of blood and she did not actually see the appellant assaulting him.

09. Dhannudas, P.W.6, Mahendra Singh @ Mahendu, P.W.7 are chance witnesses who happened to be at the place of occurrence. Dhannudas, P.W.6 stated that at night he was going to the neighbouring village for seeing a dance. On way Mahendra Singh @ Mahendu, P.W.7 met him and told him that Sannoo Ram had taken his cycle therefore both of them went to the house of the appellant. Dhannudas, P.W.6 stated that on reaching the house of the appellant he saw that the appellant and the deceased Jangulu Ram were quarrelling. On seeing him the appellant asked him to go out whereupon he came out of the house and stood under a tree while Mahendra Singh @ Mahendu, P.W.7 remained inside the house of the appellant. After some time Mahendra Singh came out and told him that Sannoo Ram had assaulted Jangulu Ram by a *Moosal*. This testimony is wholly unrebutted in cross examination.

10. Mahendra Singh @ Mahendu, P.W.7 has corroborated Dhannudas P.W.6 and deposed that while he alongwith Dhannudas had gone to the house of the appellant for bringing his cycle a quarrel was going on between the appellant and Jangulu Ram during which the appellant picked up a *Moosal* lying nearby and assaulted Jangulu Ram on the head which felled Jangulu Ram. The appellant wanted to assault Jangulu Ram for the second time but he intervened as a result of which he was hit by a *Moosal* near the left eye brow. He sat down

after sustaining the injury. The appellant again assaulted Jangulu Ram 3–4 times, Jangulu became unconscious. In para 3 of his statement he has disclosed that the appellant and Jangulu were quarrelling because Jangulu was asking for food from his wife Rajmotin, P.W.1 who apprehending that she would be beaten was not giving food. On this issue the appellant and Jangulu were quarrelling. We have gone through the testimony of Dhannudas P.W.6 and Mahendra Singh and find that it is consistent and inspires confidence.

11. Prasad, P.W.8 has stated that Rajmotin had informed him next day in the morning that there was a quarrel between the appellant and Jangulu at night and Jangulu was lying injured. He went to the house of Jangulu and saw that blood was oozing from his head. The testimony of the above witnesses finds corroboration from the medical evidence of Dr. S. Yadu, P.W.10 which proves that on 5-9-1990 he had conducted the autopsy on Jangulu and had found the injuries mentioned in para 3 of this judgment. The testimony of Dr. S. Yadu, P.W. 10 proves that death of Jangulu was homicidal. The testimony of Mahendra Singh @ Mahendu, P.W.7, Dhannudas, P.W.6, Amrotin Bai, P.W.2 and Rajmotin, P.W.1 thus establishes beyond doubt that the deceased had sustained injuries at the hands of the appellant who had assaulted the deceased by a *Moosal* repeatedly on the head. Having considered the evidence led by the prosecution in its entirety we are of the considered opinion that the trial Judge

had rightly concluded that the appellant had caused the death of Jangulu Ram.

12. The only point which remains for our consideration is as to what offence was committed by the appellant. The testimony of Mahendra Singh @ Mahendu, P.W.7 clearly goes to show that the appellant was unarmed while the quarrel was going on and had, during the quarrel picked up the *Moosal* lying nearby and had repeatedly assaulted Jangulu on the head. In para 3 of the testimony it is also borne out that the appellant did not have any motive for committing murder of Jangulu. In fact Jangulu was asking for food from his wife and the appellant was preventing him from beating his wife. Thus the assault by the appellant on Jangulu was not after deliberation or premeditation. We also find that Dr. S. Yadu, P.W.10 has neither in the post mortem report Ex.P/9-A nor in his testimony has stated that the injuries sustained by Jangulu were sufficient in the ordinary course of nature to cause death. The testimony of Prasad, P.W.8 also shows that when he reached the house of the deceased on the next day Jangulu was alive though unable to talk. In the case of ***Ram Prakash Singh vs. State of Bihar*** reported in ***1998 Cri.L.J.1622*** the Apex Court has held that the Doctor, who had performed the post-mortem examination, has not stated that the injury, which was caused to the deceased, was sufficient in the ordinary course of nature to cause death. Since the said injury was caused in a sudden quarrel, the

accused was found guilty under section 304 Part-II I.P.C. and not under Section 302 I.P.C.

13. In the case of ***Ravi Kumar*** (Supra), the Apex Court has held that for bringing Exception 4 of Section 300 of the Indian Penal Code in its operation it has to be established by the prosecution that the act was committed without premeditation, in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner. In this case which was cited by the appellant in a sudden quarrel between the accused and the deceased, the accused picked up a *dhangu* which was a hard and blunt object and gave two blows on the head of the deceased causing fatal injuries. It was held that the accused was liable to be convicted for the offence under Section 304 Part-II of the Indian Penal Code and not under Section 302 of the Indian Penal Code. Custodial sentence of 8 years already undergone by the appellant was awarded by the Apex Court in this case.

14. Applying the test laid down by the Apex Court to the facts and circumstances of the present case we find that there was no animosity between the appellant and the deceased, who were brothers. The appellant was merely preventing the deceased from beating his wife who was afraid to give food to the deceased on fear of being beaten. A quarrel had suddenly ensued between the appellant and the deceased. The appellant was not armed with the *Moosal* during the quarrel but he picked up the *Mooşal* which was lying nearby and

repeatedly assaulted the deceased on the head. There was no medical evidence to show that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause his death. The evidence led by the prosecution shows that Jangulu was alive till the next day. It is thus clear that there was a quarrel between the appellant and the deceased at night when the hungry deceased was asking for food from his wife. During the quarrel the unarmed appellant got annoyed to such an extent that he picked the *Moosal* lying nearby and repeatedly assault Jangulu on the head. Thus the offence was committed by the appellant in a heat of passion. The appellant did not intend to cause the death of Jangulu. The medical evidence does not show that the deceased Jangulu had sustained any injury on the chest. It cannot be inferred from the autopsy report Ex.P/9-B that the appellant had acted in an usual or cruel manner.

15. Considering the facts and circumstances in which the occurrence took place in its entirety, we are of the considered opinion that the appellant had assaulted Jangulu upon a sudden quarrel in a heat of passion and had not acted in an unusual or cruel manner. Therefore, the requisite intention for causing the death of Jangulu could not be attributed to the appellant, though knowledge that by assaulting Jangulu on the head repeatedly by *Moosal,* he was likely to cause death could be attributed to the appellant. The offence committed by the appellant thus squarely falls under Section 304 Part-II of the Indian Penal Code.

16. In the result, the appeal is partly allowed. The conviction of the appellant for offence under Section 302 of the Indian Penal Code and sentence awarded there under are set aside. The appellant is convicted under Section 304 Part-II of the Indian Penal Code and is sentenced to undergo Rigorous Imprisonment for 10 years. The appellant has already undergone incarceration from 5-10-1990 to 5-2-2002 i.e. for a period of more than ten years. At present the appellant is on bail in pursuance of order dated 21-11-2001 passed by this Court. Since he has already undergone the sentence of ten years as awarded by this Court, his bail bond is cancelled and the surety is discharged.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gowri